



February 28, 2002

The Honorable Richard B. Cheney  
President of the Senate  
Washington, DC 20510-0010

Dear Mr. President:

Enclosed is a draft bill to amend the Communications Act of 1934 and the Consolidated Appropriations Act of 2000 to promote certainty in upcoming spectrum auctions. The proposal is designed to foster efficient use of the spectrum in a manner that is fair to all users and helps ensure that taxpayers are adequately compensated for use of a public resource.

Any law that would reduce receipts is subject to the pay-as-you-go requirements of the Balanced Budget and Emergency Deficit Control Act. The Office of Management and Budget (OMB) advises that preliminary scoring indicates that this proposal will reduce receipts by \$4 billion in 2003 and increase receipts by \$3.3 billion in 2004, \$2.7 billion in 2005, and \$4.7 billion in 2006. OMB also advises that final scoring of enacted legislation may deviate from these estimates.

We have been advised by OMB that enactment of this legislative proposal would be in accord with the program of the President.

Sincerely,

A handwritten signature in dark ink, appearing to read "Theodore W. Kassinger".

Theodore W. Kassinger

Enclosure



Identical Letters to be Sent to:

The Honorable Dennis Hastert  
Speaker of the House of Representatives  
Washington, DC 20515-6501

The Honorable Thomas Daschle  
Majority Leader  
United States Senate  
Washington, DC 20510-1601

The Honorable Richard Armey  
Majority Leader  
House of Representatives  
Washington, DC 20515-6503

The Honorable Trent Lott  
Minority Leader  
United States Senate  
Washington, DC 20510-7010

The Honorable Richard A. Gephardt  
Minority Leader  
House of Representatives  
Washington, DC 20515-6502

The Honorable Ernest F. Hollings  
Chairman, Committee on Commerce,  
Science and Transportation  
United States Senate  
Washington, DC 20510-6125

The Honorable John McCain  
Committee on Commerce,  
Science and Transportation  
United States Senate  
Washington, DC 20510-6125

The Honorable W.J. "Billy" Tauzin  
Chairman, Committee on Energy and Commerce  
House of Representatives  
Washington, DC 20515-6115

The Honorable John D. Dingell  
Committee on Energy and Commerce  
House of Representatives  
Washington, DC 20515-6115



# A BILL

To amend the Communications Act of 1934 and the Miscellaneous Appropriations Act, 2000, to provide certainty regarding the availability of spectrum for use by new licensees in upcoming auctions.

1           *Be it enacted by the Senate and House of Representatives of the United States of America in Congress*  
2           *assembled, THAT*

## 3           **SECTION 1. SHORT TITLE.**

4           This Act may be cited as the "Promoting Certainty in Upcoming Spectrum Auctions Act."

## 5           **SEC. 2. TIMING OF THE AUCTION OF SPECTRUM IN THE 747-762 MHz AND 777-** 6           **792 MHz BANDS.**

7           (a) Sections 213(a)(3) through (a)(6) of H.R. 3425, the Miscellaneous Appropriations  
8           Act, 2000, as enacted by section 1000(a)(5) of the Consolidated Appropriations Act, 2000 (113  
9           Stat. 1501A-295), shall remain in effect through December 31, 2004.

10          (b) Section 213(a)(3) is amended by:

- 11                   (1) deleting "September 30, 2000" and inserting "December 31, 2004"; and  
12                   (2) deleting "described in paragraph (2)" and inserting "with respect to the portion  
13                   of the spectrum identified in section 337(a)(2) of the Communications Act of 1934 (47  
14                   U.S.C. 337(a)(2)).".

## 15          **SEC 3. TIMING OF THE AUCTION OF SPECTRUM IN THE 698-746 MHz BAND.**

16          (a) Section 309(j)(14)(C)(ii) of the Communications Act of 1934 is amended by deleting  
17          "September 30, 2002" and inserting "September 30, 2006."

## 18          **SEC. 4. PROVIDING CERTAINTY REGARDING THE AVAILABILITY OF** 19          **SPECTRUM FOR USE BY NEW LICENSEES IN UPCOMING AUCTIONS.**

20          The Communications Act of 1934 is amended:

21          (a) by adding to section 309(j)(14)(B), after the phrase, "for any station," the following  
22          phrase: "(except those subject to mandatory relocation regulations promulgated pursuant to  
23          paragraph (15) hereof)";



1 (b) by inserting a new paragraph (15) after section 309(j)(14), as follows:

2 **“(15) Providing Certainty in Upcoming Spectrum Auctions**

3 “(A) In order to provide certainty for the incumbent broadcasters and  
4 bidders prior to the auction of spectrum for the 747-762 MHz and 777-792 MHz  
5 bands, the Commission shall by June 30, 2003 complete a rulemaking to devise  
6 procedures for the mandatory relocation of broadcasters in television channels 59-  
7 69 by new licensees operating in the 747-762 MHz and 777-792 MHz bands.

8 “(i) Such procedures shall provide for:

9 “(I) Voluntary negotiations between a new licensee and incumbent  
10 broadcasters in television channels 59-69, such negotiations to be  
11 completed no later than December 31, 2006;

12 “(II) Involuntary relocation if the new licensee and incumbent  
13 broadcaster fail to reach agreement by December 31, 2006, and if the  
14 Commission is able to assign to the incumbent broadcaster either an  
15 analog or digital channel in television channels 2-58 for relocation. Such  
16 channel may be a channel identified by the Commission or a channel  
17 cleared for that purpose by the new licensee;

18 “(III) Band-clearing options such as those developed in the  
19 Commission’s *Third Report and Order, Service Rules for the 746-764 and*  
20 *776-794 MHz Bands, and Revisions to Part 27 of the Commission’s Rules,*  
21 *WT Docket No. 99-168, CS Docket No. 98-120, MM Docket No. 00-39,*  
22 *FCC 01-25 (rel. Jan. 23, 2001) and the Order on Reconsideration of the*  
23 *Third Report and Order, Service Rules for the 746-764 and 776-794 MHz*  
24 *Bands, and Revisions to Part 27 of the Commission’s Rules, WT Docket*  
25 *No. 99-168, CS Docket No. 98-120, MM Docket No. 00-39, FCC 01-258*  
26 *(rel. Sept. 17, 2001); and*

27 “(IV) Reimbursement for the incumbent broadcaster’s relocation  
28 costs by the new licensee operating in the 747-762 MHz and 777-792  
29 MHz bands, except that, for involuntary relocations, such costs shall not  
30 exceed reasonable costs associated with the incumbent broadcaster’s  
31 conversion to digital television. In developing these cost recovery  
32 guidelines, the Commission shall include capital costs of transmission  
33 equipment, installation and associated engineering expenses. Such  
34 guidelines shall also include recovery for non-capital costs, including, but  
35 not limited to, increased operating expenses, as well as lost advertising  
36 revenue for commercial broadcasters, and lost underwriting receipts, state



1 and local funding, and public support for non-commercial and educational  
2 broadcasters.

3 “(B) Once a television market has met the criteria established in  
4 section (14)(B) for return to the Commission of television broadcast licenses that  
5 authorize analog television service, a television broadcaster operating an analog  
6 television service in channels 59-69 in that market is no longer eligible for  
7 reimbursement.

8 “(C) The Commission shall exempt from its mandatory relocation  
9 procedures non-commercial and educational broadcasters in television channels  
10 59-69 and any broadcaster with a digital allotment in television channels 59-69, if  
11 such relocation would result in a permanent loss of broadcast service. In addition,  
12 in television markets which have not met the criteria established in  
13 section (14)(B), the Commission may, on a case-by-case basis, exempt from its  
14 mandatory relocation procedures broadcasters in television channels 59-69, if  
15 such an exemption would promote the public interest.”; and

16 (c) by amending Section 337(e)(1):

17 (1) by replacing the number “746” with “740”;

18 (2) by inserting after the phrase, “the date on which”, the phrase, “it is subject to  
19 mandatory relocation regulations pursuant to section 309(j)(15) of this Act, or”; and

20 (3) by inserting after the phrase, “as determined by the Commission”, the phrase  
21 “, whichever is earlier”.



## Statement of Purpose and Need

In 1997, Congress identified 24 MHz of spectrum in television channels 60-69 for reallocation to public safety services and 36 MHz of spectrum for reallocation to commercial use to be assigned by competitive bidding. 30 MHz of this spectrum are currently expected to be auctioned this year. The remaining 30 MHz of this spectrum have already been devoted to public safety uses (24 MHz) and private wireless use (6 MHz). In the process of reallocation, the Federal Communications Commission (FCC) has identified that existing TV broadcasters on channels 59-69 significantly encumber potential and already-licensed wireless use of channels 60-69.

Broadcasting plays an important role in providing information to the American public. However, wireless services are also increasingly important to American families, businesses, and public-safety providers for communications and delivery of information. Therefore, it is necessary to address both 1) the need to treat television broadcasters and viewers equitably during the transition from analog to digital broadcasting and 2) the growing need to make spectrum available for new and innovative wireless services.

Potential new entrants and incumbents currently face uncertainty since incumbent broadcasters do not have to return their licenses for these channels to the FCC until 2006 or the completion of the digital transition, whichever is later. Establishing regulations prior to the auction of the remaining 30 MHz in this spectrum that promote clearing the spectrum for new wireless licensees in an effective and equitable manner will significantly reduce the uncertainty. Because the FCC would have to undertake a rulemaking to establish such regulations, the deadline for collecting receipts from this auction is shifted to December 31, 2004.

An equitable and efficient solution for relocating incumbents in 60-69 is possible, given the experience of the FCC and industry in devising rules and procedures for relocating incumbent users in the spectrum bands that were made available for Personal Communications Services (PCS), a new and innovative service at the time, and for the services in the "18 GHz band."

The value of the spectrum in television channels 60-69 is different for the broadcasting and wireless industries. Therefore, incumbents' reimbursements for relocation should be based primarily on the incumbents' relocation costs not on the value of the new service offered by the new licensee. Reimbursement procedures should take this into account to help ensure that taxpayers are fairly compensated for the use of this spectrum.

The spectrum in channels 52-59 will become available for use by new licensees once the digital transition is complete, but is currently scheduled to be auctioned this year. These channels are even more heavily encumbered than channels 60-69. Because it makes more sense to auction this spectrum closer to when it is expected to become available, this legislative proposal shifts the deadline to September 30, 2006.



## SECTIONAL ANALYSIS

This legislative proposal implements the Spectrum Auctions proposal in the President's FY 2003 Budget. The proposal directs the Federal Communications Commission (FCC) to complete a rulemaking to establish mandatory relocation procedures prior to the auction of spectrum in the 747-762 MHz and 777-792 MHz bands.

Section 1 of the proposal provides that the Act may be cited as the "Promoting Certainty in Upcoming Spectrum Auctions Act."

Section 2 changes the deadline for the auction of spectrum licenses in the 747-762 MHz and 777-792 MHz bands that was established in previous appropriations law. Section (a) extends the effective date of section 213(a)(3) of the Miscellaneous Appropriations Act, 2000. Section (b)(1) amends section 213(a)(3) to change the deadline for the deposit in the Treasury of all proceeds from the auction of spectrum in the 747-762 MHz and 777-792 MHz bands from September 30, 2000 to December 31, 2004. Section (b)(2) replaces language in section 213(a)(3) to specify that section 213(a)(3) applies to spectrum in the 747-762 MHz and 777-792 MHz bands, as identified in section 337(a)(2) of the Communications Act of 1934.

Section 3 amends section 309(j)(14)(C)(ii) of the Communications Act of 1934 to change the deadline for the assignment by competitive bidding of spectrum licenses reclaimed by the FCC at the completion of the digital transition from September 30, 2002 to September 30, 2006.

Section 4(a) amends section 309(j)(14)(B) of the Communications Act of 1934 to clarify that the incumbent broadcasters in channels 59-69 that are subject to the mandatory relocation procedures established in new paragraph (15) are not subject to the extension provisions under paragraph 309(j)(14)(B).

Section 4(b) adds a new paragraph 309(j)(15) directing the FCC to complete the rulemaking on mandatory relocation. Section (A) of the new paragraph requires the FCC to complete a rulemaking by June 30, 2003, to devise rules and procedures for the mandatory relocation of broadcasters in television channels 59-69. In general, these rules and procedures are expected to be similar to those developed in the First and Third Report and Orders in the FCC's Emerging Technologies proceeding (ET Docket No. 92-9, primarily 7 FCC Rcd 6886 (1992) and 8 FCC Rcd 6589 (1993)). Subsection (A)(i) stipulates that the FCC include certain elements in its rulemaking. Subsection (A)(i)(I) directs the FCC to establish a voluntary negotiations process that should conclude by December 31, 2006. Subsection (A)(i)(II) directs the FCC to establish a process for involuntary relocation if parties fail to reach agreement after the voluntary negotiation period, contingent upon if the FCC is able to assign the incumbent broadcaster either an analog or digital channel in television channels 2-58 for relocation. The channel a broadcaster is relocated to can either be a channel identified by the FCC or a channel cleared by the new licensee for the purpose of relocating an incumbent from channels 59-69. Subsection (A)(i)(III) directs the FCC to include band-clearing options such as those developed in its *Third Report and Order, Service Rules for the 746-764 and 776-794 MHz Bands, and Revisions to Part 27 of the Commission's Rules*, WT Docket No. 99-168, CS Docket No. 98-120, MM Docket No. 00-39,



FCC 01-25 (rel. Jan. 23, 2001) and the *Order on Reconsideration of the Third Report and Order, Service Rules for the 746-764 and 776-794 MHz Bands, and Revisions to Part 27 of the Commission's Rules*, WT Docket No. 99-168, CS Docket No. 98-120, MM Docket No. 00-39, FCC 01-258 (rel. Sept. 17, 2001). Subsection (A)(i)(IV) directs the FCC to provide for reimbursement by the new licensees operating in the 747-762 MHz and 777-792 MHz bands for relocation costs of the incumbents and for involuntary relocations to determine a cap on such reimbursement costs based upon capital costs of transmission equipment, installation and associated engineering expenses and additional non-capital costs, including, but not limited to, increases to operating expenses, as well as lost advertising revenue for commercial broadcasters, and lost underwriting receipts, state and local funding, and public support for non-commercial and educational broadcasters.

Section (B) of the new paragraph creates a sunset provision on the incumbents' eligibility for reimbursement. Once a television market meets the conditions established in section 309(j)(14)(B) for return to the FCC of analog television licenses, a broadcaster operating an analog television service in that market is no longer eligible for reimbursement.

Section (C) of the new paragraph establishes that the FCC shall exempt non-commercial and educational broadcasters in TV channels 59-69 and broadcasters with digital allotments in TV channels 59-69 from involuntary relocation, if such relocation would result in permanent loss of broadcast service. In addition, if the conditions established in section 309(j)(14)(B) have not been met, the FCC may, on a case-by-case basis, exempt a broadcaster in TV channels 59-69 from involuntary relocation if such an exemption would promote the public interest.

Section 4(c) amends section 337(e)(1) of the Communications Act of 1934 to establish that incumbent broadcasters in channels 59-69 may no longer operate on those frequencies if they are subject to the mandatory relocation procedures established in new paragraph 309(j)(15) or if the FCC determines that the digital transition has been completed, whichever is earlier.